RECENT DECISIONS

ARMY AND NAVY—ENLISTMENT OF MINOR—RIGHT OF PARENTS TO DISCHARGE.—The petitioner's son, a minor, by misrepresenting his age, enlisted in the United States army without the petitioner's knowledge or consent. The petitioner sued out habeas corpus to secure his son's discharge; but before the writ was issued the respondents arrested him with the intention of preferring charges of fraudulent enlistment against him. *Held,* the petitioner is entitled to have his son released. *Ex parte Avery,* 235 Fed. 248.

An infant's contract is generally voidable; but even at common law an exception was made to contracts of enlistment, which were held to be valid and binding. See *The King* v. *Inhabitants of Rotherfield Greys,* 1 B. & C. 345. And in construing § 1117 of the Revised Statutes, providing that no person under the age of twenty-one shall be enlisted without the written consent of his parents or guardians, infants' contracts of enlistment have been held binding on them. *In re Morrissey,* 137 U. S. 157. Various reasons have been assigned for this variation from the general rule. Enlistment, like marriage, effects a change of status. *In re Grimley,* 137 U. S. 147; *In re Morrissey, supra.* The contract of enlistment is not a civil contract governed by municipal law, but is based on the duty of a citizen to defend his state. *United States* v. *Blakeney,* 3 Gratt. (Va.) 405. See *Acker* v. *Bell,* 62 Fla. 108, 57 South. 356, 39 L. R. A. (N. S.) 454, 18 Am. St. Rep. 569.

Although the infant cannot avoid his contract of enlistment, parents are entitled to have their minor sons discharged on habeas corpus proceedings; since the statute is for their benefit. *In re Falconer,* 91 Fed. 649; *Ex parte Houghton,* 129 Fed. 239; *Doane* v. *Burkman,* 190 Fed. 541. But the infant who fraudulently misrepresents his age, or deserts is guilty of a crime for which he can be punished by the military authorities, and the question arises whether the civil courts will entertain jurisdiction to discharge one accused of these offenses from the custody of the court-martial. Some cases hold that as the contract of enlistment is binding on the infant he can be punished for it, and that the civil courts will not entertain jurisdiction of habeas corpus proceedings until after the court-martial proceedings are over. *Ex parte Lewkowitz,* 163 Fed. 646; *United States ex rel. Laikund* v. *Williford,* 220 Fed. 291. Other cases hold that as the minor was still a soldier, and therefore under the jurisdiction of the court-martial when proceedings against him for fraudulent enlistment were begun, the civil courts will not take jurisdiction after that time. *United States* v. *Reaves,* 60 C. C. A. 675, 126 Fed. 127; *In re Lessard,* 134 Fed. 305.

But it has been held, in accordance with the principal case, that until actual proceedings have been begun by the court-martial, the civil courts will take jurisdiction. *Ex parte Carver,* 103 Fed. 624; *Ex parte Houghton, supra.* But see *Dillingham* v. *Booker,* 163 Fed. 696, 18 L. R. A. (N. S.) 956. These holdings are based on the fact that the statute was

enacted for the benefit of parents and guardians in order that their children should not be wrested from their care and control, and should not be construed in such a way as to nullify it on account of the court-martial proceedings thus using it as a medium for their punishment. See *Ex parte Lisk*, 145 Fed. 860; *Ex parte Bakley*, 148 Fed. 56. But see *Dillingham* v. *Booker*, *supra*. Conversely, it is held that if actual proceedings have been begun by the court-martial, civil jurisdiction will not attach. *In re Miller*, 52 C. C. A. 472, 114 Fed. 438.

ATTORNEY AND CLIENT—SETTLEMENT BY CLIENT—ATTORNEY'S COMPENSATION.—The plaintiffs were retained by the defendant to conduct certain litigation for him, their fee being contingent on a favorable termination of the case. Pending the action, the defendant in good faith amicably settled the controversy without the plaintiffs' consent. This action is brought by the attorneys to recover the agreed compensation. *Held*, the plaintiffs can only recover on a *quantum meruit* the reasonable value of the services actually rendered. *Southworth et al.* v. *Rosendahl* (Minn.), 158 N. W. 717.

That the law approves and encourages the settlement of litigation outside of court is well established. *Re Snyder*, 190 N. Y. 66, 82 N. E. 742, 123 Am. St. Rep. 533, 13 Ann. Cas. 441, 14 L. R. A. (N. S.) 1101; *Huber* v. *Johnson*, 68 Minn. 74, 70 N. W. 806, 64 Am. St. Rep. 456. And it is considered against public policy to constrain an unwilling suitor to keep alive litigation, and penalize him for exercising his legal right to compromise by awarding the attorney the contract price without regard to the value of the services rendered by him. *Andrews* v. *Haas* (N. Y.), 108 N. E. 423. See *Louque* v. *Dejan*, 129 La. 519, 56 South. 427, 38 L. R. A. (N. S.) 389.

The contingency never happening, the services stipulated under the contract were never fully performed; and since the contract is entire, nothing short of complete performance would authorize a recovery on it. See *Harris* v. *Root*, 28 Mont. 159, 72 Pac. 429. Hence, the attorney is relegated to an action upon a *quantum meruit* for the value of the services rendered. *Foley* v. *Kleinschmidt*, 28 Mont. 198, 72 Pac. 432. This is true even where it is impossible to show whether the attorney would have been successful or not. *Semmes* v. *Western Union Tel. Co.*, 73 Md. 9, 20 Atl. 127. And also where he has been unsuccessful in the lower court. See *Johnston* v. *Cutchin*, 133 N. C. 119, 45 S. E. 522.

But some cases hold that on account of the nature of the services rendered by an attorney an exception to the general rule should be made, and the measure of damages should be the compensation named in the contract. *McElhinney* v. *Kline*, 6 Mo. App. 94; *Millard* v. *Jordan*, 76 Mich. 131, 42 N. W. 1085; *Brodie* v. *Watkins*, 33 Ark. 545, 34 Am. Rep. 49. See *Myers* v. *Crockett*, 14 Tex. 257. Some of the cases adhering to this view allow the attorney to recover the entire amount of the contract, on the ground that it is impossible to value his services. *Kersey* v. *Garlin*, 77 Mo. 645; *Polsley* v. *Anderson*, 7 W. Va. 202, 23 Am. Rep. 613; *Brodie* v. *Watkins*, *supra*. Others proceed upon the ground that the acts of the client in effecting the compromise without the consent